

**Internal Revenue Service**

Number: **200711020**

Release Date: 3/16/2007

Index Number: 9100.29-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-144735-06

Date:

November 29, 2006

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Year 3 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated September 20, 2006, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in letters dated November 1 and November 27, 2006. The extension is being requested in order to allow Parent to file a “§ 1.337(d)-2T(c) statement” under § 1.337(d)-2T(c)(3) of the Income Tax Regulations (the “Election”) to recognize some or all of a loss upon the disposition of stock of a subsidiary. The Election was required to be filed with Parent's consolidated Federal income tax return for Year 1 (for the fiscal year ended on Date 1), which was filed on Date 2. The material information submitted for consideration is summarized below.

Prior to a merger that took place in Year 2, Parent was the common parent of a consolidated group which filed consolidated Federal income tax returns. From Year 3 until Year 1, these returns included Sub 1 which was 100 percent owned by Parent. Sub 1 owned 100 percent of both Sub 2 and Sub 3. Sub 1 was a first-tier wholly owned subsidiary of Parent from Date 3 until Date 4 when Parent sold all of its Sub 1 stock (including Sub 1's stock interests in Sub 2 and Sub 3), at a loss, to private investors in a taxable transaction.

An election under § 1.337(d)-2T(c)(3) to recognize some or all of a loss upon the disposition of the stock of a subsidiary (Sub 1) was required to be filed with or as part of Parent's income tax return for the year of its disposition. However, for various reasons, the Election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for the taxable year for which the Election should have been filed or for any subsequent taxable year.

Section 1.337(d)-2T(a)(1) provides that no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

Section 1.337(d)-2T(a)(2) provides that a disposition means any event in which gain or loss is recognized in whole or in part.

Section 1.337(d)-2T(c)(1) provides that § 1.337(d)-2T(c) applies with respect to stock of a subsidiary only if a separate statement entitled “§ 1.337(d)-2T(c) statement” is included with the return in accordance with § 1.337(d)-2T(c)(3).

Section 1.337(d)-2T(c)(2) provides that loss is not disallowed under § 1.337(d)-2T(a)(1) to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities).

Section 1.337(d)-2T(c)(3) provides that the statement required under § 1.337(d)-2T(c)(1) must be included with or as part of the taxpayer's return for the year of the disposition.

In general, § 1.337(d)-2T applies with respect to dispositions and deconsolidations on or after March 7, 2002 and before March 3, 2005.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when it is established that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the Government's interests. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.337(d)-2T(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on qualified tax professionals who failed to make, or advise Parent to make, the Election, and that the interests of the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Parent has shown that it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until 60 days from the date on this letter, for Parent to file the Election.

The Election statement should be entitled “§ 1.337(d)-2T(c) statement” and must include all the material specified by § 1.337(d)-2T(c)(3).

The Election is to be filed with the Director who has jurisdiction over Parent's return within the time period specified above.

The above extension of time is conditioned on Parent's consolidated group's tax liability, if any, being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been made timely (taking into account the time value of money). No opinion is expressed as to the Parent's consolidated group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that taxpayers' tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under

§ 301.9100-3 to file the Election, any otherwise applicable penalties and interest continue to apply.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically, may satisfy this requirement by attaching to their return a statement that provides the date and control number (PLR-144735-06) of this letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)